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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 391.

ALMA LOVELL,

Appellant,

against

CITY OF GRIFFIN,

Appellee.

BRIEF AND MOTION ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION AS AMICUS CURIAE.

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ACKERMAN PRESS, Inc., 142 Liberty St., 'Phones Rector 2-5356-7

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Motion for Leave to File Brief as Amicus Curiae.

MAY IT PLEASE THE COURT:

The undersigned, as counsel for the American Civil Liberties Union, a corporation, respectfully move this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae*. The consent of counsel for both parties herein has been secured.

Special reasons in support of this motion are set out in the accompanying brief.

January 15, 1938.

FRANCIS BIDDLE,
OSMOND K. FRAENKEL,
Counsel for the
American Civil Liberties Union.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1937.

No. 391.

ALMA LOVELL,

Appellant,

against

CITY OF GRIFFIN,

Appellee.

BRIEF ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION AS AMICUS CURIAE.

The American Civil Liberties Union is submitting a brief herein as *amicus curiae* because of its interest in the question of free speech raised herein. The American Civil Liberties Union is an organization devoted to the furtherance and protection of the personal rights guaranteed by the Constitution of the United States. It has for many years supported individuals and groups whose basic rights were threatened, either in the courts, or before legislative bodies. It believes that essential to the functioning of any democratic government is the right of people freely to express their opinions. In line with that belief the American Civil Liberties Union has been active in the defense of persons subject to prosecution for mere expression of opinion.

The American Civil Liberties Union believes that this case presents an important variation of the ever-recurring

problem of suppression. It is true that here is no prosecution based on the nature of the opinions expressed. Nevertheless, there has been effective suppression of the dissemination of opinion. And the case is the more serious in that it is in no way contended that the opinions expressed violated any law.

Succinctly put, the question is whether a municipality may restrict the dissemination of opinion by requiring a permit as a condition precedent to distribution of pamphlets. We believe that, under well settled doctrine, only a negative answer to the question is possible.

If anything must be deemed settled it is that the guarantees of freedom of speech and of the press prohibit prior censorship by any method whatever.

> *Near* v. *Minnesota,* 283 U. S. 697.
> *Grosjean* v. *American Press Co.,* 297 U. S. 233.

There can, therefore, be no doubt that an ordinance which prohibits the publication of newspapers violates the constitutional guarantee. No different result can follow because distribution rather than publication is thus restricted. See *In re Jackson,* 96 U. S. 727. And many courts have so held.

> *Star Co.* v. *Brush,* 185 N. Y. App. Div. 261, 172 N. Y. Sup. 851.
> *Star Co.* v. *Brush,* 103 Misc. 631, 170 N. Y. Supp. 987.
> *Star Co.* v. *Brush,* 104 Misc. 404, 172 N. Y. Supp. 320 (1918).
> *Ex parte Neill,* 32 Tex. Cr. 275, 22 S. W. 923 (1893).
> *Dearborn Pub. Co.* v. *Fitzgerald,* 271 Fed. 479 (1921).

It is equally obnoxious to the constitutional guarantee that the ordinance, instead of absolutely prohibiting distribution, requires a permit for that purpose. *Star Company* v. *Brush,* 104 Misc. 404, 172 N. Y. Supp. 320 (1918). Can it make any difference that the ordinance refers to leaflets rather than to newspapers?

In the case at bar the ordinance describes "circulars, handbooks, advertising or literature of any kind" (R., 3). It has been applied to pamphlets which, though offered in evidence (R., 12), are not printed in the record. However, a statement made by defendant at the trial describes these pamphlets as explaining the gospel of the "Kingdom of Jehovah" (R., 12). The doctrine preached was wholly religious, in no way in violation of any law or conducive to a breach of the peace. Nor can it be said that distribution of the material might be restricted on the ground that it was commercial in character.

While the precise question here involved has not heretofore been decided by this Court, other courts have held that similar ordinances violated the guarantee of freedom of speech or, mindful of the constitutional guaranty, they have restricted the application of the ordinances to commercial matter.* In the first category fall:

Ex parte Pierce, 125 Tex. Cr. 470, 75 S. W. 2nd 264 (1934).

New Rochelle v. *McCormick,* Westch. (N. Y.) L. J., June 11, 1935, page 997.

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*Recent unreported cases of both kinds have been noted in the Bulletin of the International Juridical Association: *City of Newark* v. *Hill,* I, No. 12, page 2 (May, 1933); *People* v. *Toth,* II, No. 5, page 2 (Oct., 1933); *Cox* v. *Edgewater,* VI, page 41 (Oct., 1937); *City of Johnstown* v. *Spencer,* VI, page 74 (Dec., 1937); see also V, Bulletin of International Juridical Association, 147 (June, 1937).

See also

People v. *Armentrout*, 118 Cal. A. 761, 1 P. 2nd 556, 560 (1931).
City of Chicago v. *Schultz*, 341 Ill. 208, 173 N. E. 276 (1930).
People v. *Armstrong*, 73 Mich. 288, 41 N. W. 275 (1889).

In the second are:

Coughlin v. *Sullivan*, 100 N. J. L. 42, 126 Atl. 177 (1924).
People v. *Johnson*, 117 N. Y. Misc. 133 (1921).

This Court has recently expressed, in unmistakable language, the importance of the right of free expression of ideas.

deJonge v. *Oregon*, 299 U. S. 353.
Herndon v. *Lowry*, 301 U. S. 242.

The observations then made are equally applicable to pamphlets and leaflets. The American Civil Liberties Union is particularly concerned with these forms of expression because they are often the only forms open to minorities. The powerful can always be heard through the ordinary media of public expression. But the weak, especially if unpopular, are usually unable to have their views brought to public notice through the newspapers. It is often impossible for such groups to conduct public meetings. Private halls may be denied, public places barred. We have just seen this happen even to the relatively powerful C. I. O. in Jersey City. It has happened to other labor groups on numerous occasions in various parts of the country. And the radio is expensive and not always available.

Opportunities for expression of a particular point of view may exist, therefore, only through leaflet distribution. Such leaflets have, indeed, formed an important part in our history, from colonial days to the present. They are an indispensable method of voicing a point of view, the only effective newspaper for a special group. And, of course, their effectiveness depends upon the right to distribute them freely.

It may be urged, on behalf of the City, that distribution can be prevented if it becomes a "nuisance", either because it results in littering the streets or in annoyance to citizens. But the ordinance now under review is not restricted to cases of littering or to importunate efforts at distribution. Nor was there any evidence at the trial that would have justified conviction for either of such offenses. The testimony of the arresting officer was that the defendant had placed the pamphlet in the letter box of a Miss Smith and then offered it to her when she came to the door (R., 6). A single instance such as this could not possibly support a charge of littering or of annoyance.

Finally, it is a matter of common knowledge that ordinances such as the one involved in the case at bar are not generally enforced. It is only when some unpopular group attempts to distribute material that the ordinance is invoked. This may be difficult to establish so as to make applicable the principle of *Yick Wo* v. *Hopkins,* 118 U. S. 356. But the existence of discrimination in enforcement destroys any claim for the necessity for such type of ordinance.

It is, therefore, respectfully submitted that the ordinance, as here applied, is void.

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